

**REMARKS**

Applicants previously presented claims 1-12 and 21-26 for examination. In the Office Action and the Advisory Action, the Examiner rejected all of the claims.

Applicants appreciate the comments in the Office Action and the Advisory Action. However, for the reasons to be stated below, Applicants respectfully traverse the rejections.

By this response, Applicants have amended claims 1, 7, 9-11, 21 and 24; cancelled claims 3-6, 12, 22, 23, 26; and added new claims 27-36. Accordingly claims 1, 2, 7-11, 21, 24, 25, and 27-36 remain pending. Applicants respectfully request that the Examiner reconsider the application in light of the amendments and the remarks expressed herein.

**Claim objections**

Claim 12 was objected to in the Office Action. Following the suggestions in the Office Action, Applicants have cancelled the claim.

**Claim Rejections**

Claims 1-12 and 21-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (USPN 6,741,995, hereinafter "Chen"), in view of Dietrich et al (USPN 6,526,392, hereinafter "Dietrich") in further view of Crici et al (US 2005/0027580, hereinafter "Crici"). Applicants respectfully disagree.

Chen pertains to methods for creating a customer profile by analyzing relationships in databases. For example, to know how much profit each customer is contributing to the bank's bottom line, a bank segments its customers based upon their contributions or other attributes.

The Office Action admitted on its page 6 the following:

*"Chen et al does not disclose determining an actual capacity allocation distribution among the plurality of customer groups with reference to the*

*customer order data; and adjusting the range of customer point values associated with selected customer groups".*

Contrary to the above admission, page 2 of the Advisory Action has the following assertion:

*"Chen et al indeed discloses the range of customer point values associated with selected customer groups is adjusted..."*

These two statements contradict each other.

In any event, the only referenced support provided by both the Office Action and the Advisory Action is in Chen's "segmenting of customers into one or more groups, based upon customer profiles, wherein the customer profiles are analyzed by a product planner to determine whether to enter or divest a line of business."<sup>1</sup> Then, the Advisory Action asserted that "the marketer in Chen et al can determine efficacy of the marketing mix, based on the customer profile, wherein the segmenting of customers can be changed (i.e., adjusted) in order to determine the best marketing mix." However, such an assertion has no support in Chen.

Chen teaches customer segmentation, such as assigning top 20% of the customers under a segment code value of 1.<sup>2</sup> In Chen, customers are segmented based on certain existing customer attributes. Then Chen analyzes the customer profiles to determine whether to enter or divest a line of business. The Advisory Action simply asserted that "the segmenting of customer can be changed (i.e. adjusted)". Chen has not taught or suggested adjusting the range of customer values associated with a customer group. Though Chen has taught analyzing customer profiles, there are probably millions of ways to do that. Moreover, Chen teaches analyzing the profiles to determine whether to enter or divest a line of business. Such an analysis does not require or suggest adjusting the previously defined segments.

There is just no teaching or suggestion in Chen of determining an actual capacity allocation distribution among the customer groups so as to adjust the range of customer values associated with one customer group.

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<sup>1</sup> The last 7 lines on page 3 of the Office Action.

<sup>2</sup> See Chen's Table 2.

In an attempt to remedy the deficiencies, the Office Action and the Advisory Action introduced Dietrich.

Dietrich pertains to setting a price for a service contract. Dietrich reads data associated with the service, analyzes the data to create customer profiles, evaluates the incremental cost of adding a new customer to a service network, and determines a price range for the service contract.

First, Dietrich does not teach or suggest associating a customer value with each customer, grouping the customers based on ranges of customer values, and adjusting a range of customer point values associated with one customer group. Such processes are different from evaluating incremental cost and resource allocation of adding new customer to determine the correct price range.

Second, independent of whether Dietrich has taught determining an actual capacity allocation distribution among the plurality of customer groups, Dietrich has not taught or suggested determining an actual capacity allocation distribution among the customer groups so as to *adjust at least the range of customer values associated with one customer group*.

Third, as to delivery windows, again the Office Action and the Advisory Action provided contradictory statements. First, the Office Action stated that,

*"Neither, Chen et al nor Dietrich et al disclose wherein a delivery interface with a plurality of delivery windows is generated to allow a specific customer to select at least one of the windows for delivering an order to the specific customer"*<sup>3</sup>

Then on page 2 of the Advisory Action, there is the following assertion:

*"The Examiner ... submits that Dietrich discloses the service activity for each service delivery interval (i.e., selection of delivery windows) based upon the customer profile (column 4, lines 33-40)."*

The first statement admitted that Dietrich does not disclose delivery windows for customers to select, while the second statement stated that Dietrich discloses selection of delivery windows. It would be appropriate for the Patent Office to clarify which is its actual position.

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<sup>3</sup> The last paragraph on page 4 of the Office Action.

In any event, the only support alleged to be found in Dietrich regarding selection of delivery windows is in Dietrich's column 4, lines 33-40. In that paragraph, Dietrich generally teaches techniques to form a profile of a new customer. Dietrich generally describes the following techniques: (a) The profile may be specified by the customer, and (b) the profile may be generated from contract specifications, such as total monthly demand and historical demand from this customer or a similar customer. Then, Dietrich states that in either case, the result is a customer profile describing "the anticipated service activity for each service delivery interval over the contract horizon."<sup>4</sup> It is unclear how one could reach the conclusion that such disclosure in Dietrich teaches the selection of delivery windows. Applicants respectfully request the Examiner designate the particular part(s) in Dietrich being relied on to support such assertions, if the Examiner continues to make them.

Still further the Office Action brought in Crici to remedy the deficiency that neither "Chen et al nor Dietrich et al disclose wherein a delivery interface with a plurality of delivery windows is generated to allow a specific customer to select at least one of the windows for delivering an order to the specific customer"<sup>5</sup>, which Applicants agree.

In general, Crici pertains to providing service receivers with remote appointment scheduling capabilities utilizing the Internet. As support in Crici, the Office Action relied on "a service receiver (i.e., specific customer) accessing the schedule of a service provider in order to determine which days and times are available to make the appointment (§ 0017 and § 0023)"<sup>6</sup>; "the service provider [in Crici] can view and change their appointment schedules based upon resources (§ 0016)"<sup>7</sup>; and "the service receiver provided with their own customized screen display (i.e., based upon customer designation, § 0019)"<sup>8</sup>. Applicants respectfully disagree that Crici can overcome the serious deficiencies of Chen or Dietrich noted above.

There are multiple reasons supporting Applicants' position that Crici cannot overcome Chen's or Dietrich's deficiencies. For example, Crici is not even in the areas of, nor has Crici taught or suggested, displaying available delivery windows to a

<sup>4</sup> Col. 4, lines 38-30 in Dietrich.

<sup>5</sup> The last paragraph on page 4 of the Office Action.

<sup>6</sup> The last paragraph on page 4 of the Office Action.

<sup>7</sup> The middle sentence of the 2<sup>nd</sup> paragraph on page 9 of the Office Action.

<sup>8</sup> The third line of the 1<sup>st</sup> paragraph on page 10 of the Office Action.

customer and receiving a customer selection to fulfill a customer order. Also, though Crici might have allowed a service receiver to access the schedule of a service provider, the schedule is different from a delivery window as claimed by Applicants. In Crici, the schedule is the schedule of the service provider, and is not determined based on information of service receivers.

In any event, both Chen and Dietrich, singly or in combination, do not teach or suggest at least (a) associating a customer value with each customer; (b) dividing the customers into at least two customer groups, each corresponding to a range of customer values; and (c) determining an actual capacity allocation distribution among the customer groups based on information in the customer order data so as to adjust at least the range of customer values associated with one customer group. Since Crici also does not provide such teachings, bringing in Crici alleging that Crici teaches delivery windows cannot remedy the deficiencies of both Chen and Dietrich.

The Office Action also asserted that

“Dietrich et al discloses suitable shipping profile presented to the customer (column 7, lines 7-24), while Chen et al disclose including a plurality of expressions for segmenting customers (column 4, lines 37-41), therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to include adjusting the range of customer point values associated with selected customer groups, wherein a delivery interface with a plurality of delivery windows is generated to allow a specific customer to select at least one of the windows for delivering an order to the specific customer, wherein the at least one of the windows available to be selected depends on the customer group to which the specific customer is assigned and the adjusted range of customer point values in Chen et al, as seen in Dietrich et al and Crici et al, respectively, thus effectively determining the delivery availability for a customer based upon customer profile, making Chen et al more robust.”<sup>9</sup>

This paragraph is a very difficult to comprehend.

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<sup>9</sup> The first paragraph on page 5 of the Office Action.

Trying to understand the arguments in the above paragraph, Applicants parse the above paragraph into its separate parts:

Because

(A) Dietrich discloses shipping profile presented to customer (column 7, lines 7-24) and

(B) Chen discloses customer segmentation (column 4, lines 37-41),

Therefore the following (I-IV) become obvious:

(I) Adjusting the range of customer point values associated with selected customer groups,

(II) A delivery interface with a plurality of delivery windows is generated,

(III) The windows allow a specific customer to select at least one of the windows for delivering an order to the specific customer, and

(IV) At least one window available to be selected depends on (i) the customer group to which the specific customer is assigned and (ii) the adjusted range of customer point values.

Since (I-IV) are obvious,

The delivery availability for a customer based upon customer profile is effectively determined, making Chen et al more robust.

If Applicants' parsing is wrong, Applicants request corrections from the Examiner.

If the parsing is correct, the Office Action at least has acknowledged that none of the references specifically teaches (I-IV). To establish that the cited references have suggested (I-IV), the Office Action argues that (I-IV) are obvious because of (A-B) so as to make "Chen et al more robust."

First of all, the Office Action mischaracterizes Dietrich's teaching in (A). In its column 7, lines 7-24, Dietrich generally teaches characterizing a customer for costing. For customer characterization, Dietrich forms customer profile by identifying customer shipping history. Then, Dietrich statistically summarizes the shipping history to produce estimates for nominal daily shipments, pieces per shipment, and distribution of shipments

by weight, by day of week and by month. Nowhere in that section does Dietrich teach presenting shipping profile to customer. Second, if making Chen more robust is the motivation in the 103 rejection, there are numerous ways to make Chen more robust.

While it may be permissible in some cases to modify the prior art references in the examination of Applicants' applications, such modifications are not allowed if they are prompted by Applicants' disclosure, rather than by a reasoned analysis of the prior art and by suggestions provided therein.

A rejection is not allowed to use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate Applicants' claimed invention. In this particular situation, the prior art references do not even have many of the "isolated disclosures". For example, Chen, Dietrich and Crici do not teach or suggest any of the following features:

- (a) scheduling delivery of products;*
- (b) displaying a plurality of available delivery windows to the customer based on the piece of information regarding the customer,*
- (c) receiving from the customer a selection of a delivery window from the plurality of available delivery windows to fulfill an order for the customer;*
- (d) identifying a route from a plurality of routes to deliver the order based on the selected delivery window; and*
- (e) associating a customer value with each customer; dividing the customers into at least two customer groups, each corresponding to a range of customer values; and determining an actual capacity allocation distribution among the customer groups based on information in the customer order data so as to adjust at least the range of customer values associated with one customer group.*

Not only are there no teachings, suggestions or motivations to combine Chen, Dietrich and Crici in the manner proposed in the Office Action, numerous limitations in the claimed invention are nowhere to be found in the references. Thus, it is submitted that Chen, Dietrich and Crici do not teach or suggest independent claim 1, singly or in any

combination, and likewise its dependent claims 2, 7-11, 21, 24, 25, and 27-35 for at least the reasons noted above.

Additional limitations recited in the independent claim 1 or dependent claims of claim 1 are not further discussed as the above-discussed limitations are clearly sufficient to distinguish the claimed invention from Chen, Dietrich and/or Crici. Thus, it is respectfully requested that the Examiner withdraw the rejections of claims 1, 2, 7-11, 21, 24, 25, and 27-35 under 35 U.S.C. 103(a).

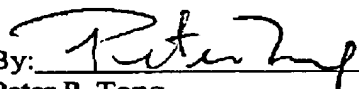
Regarding the remaining references cited by the Examiner, since they have not been applied against any of the claims and do not appear properly applicable thereto, no further mention thereof will be made.

It is submitted that claims 1, 2, 7-11, 21, 24, 25, and 27-35, (with the newly added claim 36 for similar reasons stated above) are patentably distinct from the cited references. Reconsideration of the application and an early Notice of Allowance are earnestly solicited.

In the event that the Examiner, upon reconsideration, determines that an action other than an allowance is appropriate, the Examiner is requested and authorized to telephone Applicants' representative prior to taking such action, if the Examiner feels that such a telephone call will advance the prosecution of the present application.

Respectfully submitted,

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